SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 567

SPIELMAN MOTOR SALES CO., INC., APPELLANT,

vs.

WILLIAM C. DODGE, AS DISTRICT ATTORNEY OF NEW YORK COUNTY, STATE OF NEW YORK

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

INDEX

	Original	Print
Supplemental record from D. C. U. S., Southern New York	"A"	1
Stipulation as to supplemental record	"A"	1
Order on stipulation as to findings of fact and conclusions of law, etc.	1	1
Stipulation as to findings of fact and conclusions of law, etc.	2	2
Complainant's proposed findings of fact and conclusions of law	6	4
Findings of fact and conclusions of law	20	13
Supplemental assignments of error	55	43
Stipulation as to transcript	67	51
Clerk's certificate (omitted in printing)	68	

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 25, 1935.

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[fol. a]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

SPIELMAN MOTOR SALES CO. INC., Complainant-Appellant,

against

WILLIAM C. DODGE, as District Attorney of New York County of the State of New York, Defendant-Appellee

STIPULATION AS TO SUPPLEMENTAL RECORD

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the following enumerated papers constitute the supplemental papers to be printed in the Record on Appeal in the transcript of the record:

1. Stipulation dated January 30th, 1935, and Order of Court based thereon.

2. Complainant's proposed Findings of Fact and Conclusions of Law.

3. The Court's Findings of Fact and Conclusions of Law.

4. Supplemental Assignment of Errors.

Dated, New York, February 20th, 1935.

Miller, Paul & Placer, Attorneys for Complainant-Appellant. David Blitzer, Harold H. Straus, Attorneys for Defendant-Appellee.

So ordered:

Robert P. Patterson, U. S. D. J.

[fol. 1] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ON STIPULATION AS TO FINDINGS AND CONCLUSIONS, ETC. —Feb. 1, 1935

Upon the pleadings, papers and proceedings heretofore had herein and upon reading and filing the annexed stipu-

lation signed by the attorneys for the respective parties hereto, it is

Ordered, that the relief consented to and stipulated in the annexed stipulation be and the same is hereby granted.

Martin T. Manton, United States Circuit Judge;
Murray Hulbert, United States District Judge;
Robert P. Patterson, United States District Judge.

Enter: —— ——.

[fol. 2] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

STIPULATION AS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW, ETC.—Filed Feb. 1, 1935

Whereas, the above named complainant has commenced the above entitled action against the above named defendant for a permanent injunction for the relief set forth in the Bill of Complaint herein; and

Whereas, the complainant has heretofore moved this Court before a Statutory Court composed pursuant to Title 28, Section 380 of the Judicial Code for a preliminary injunction and the defendant by notice of motion duly moved to dismiss the Bill of Complaint and both motions having been duly heard simultaneously by the said Statutory Court; and

Whereas, upon the said hearing affidavits and exhibits were submitted by the complainant in support of its application and by the defendant in opposition thereto and all the facts and issues having been developed in the affidavits and exhibits submitted on the hearing before the said Statutory Court on the said complainant's application for a temporary injunction and the defendant's application to dismiss the Bill of Complaint; and

[fol. 3] Whereas, after due deliberation the said Statutory Court rendered its opinion and entered a final decree denying the application of the complainant for an interlocutory injunction and dismissing the Bill of Complaint herein from which Decree complainant has duly appealed to the Supreme Court of the United States; and

Whereas, the transcript of the record on appeal herein has been duly certified and transmitted to the Clerk of the United States Supreme Court and an order has been made by the United States Supreme Court noting probable jurisdiction of this cause; and

Whereas, in the opinion of all counsel herein, to wit, counsel for the complainant, for the defendant and counsel for the Attorney General and Governor of the State of New York, and the parties to this action, findings of fact and conclusions of law in accordance with Equity Rule 70½ are deemed necessary in order that the record on appeal herein be completed and in order that there may be a final adjudication of the issues in this appeal on the merits;

Now, therefore, it is hereby stipulated and agreed by and between the attorneys for the respective parties hereto as follows:

(1) That the hearing on the application for a preliminary injunction and upon the motion to dismiss the Bill of Complaint be deemed a final hearing on the merits, that answer to the Bill of Complaint be deemed to have been waived, and that the affidavits and exhibits introduced upon [fol. 4] such hearing by the respective parties be deemed the evidence and testimony upon such final hearing with the same effect as though same had been adduced by oral testimony of the respective affiants.

(2) That the respective parties hereto submit proposed findings of fact and conclusions of law based upon said affidavits and exhibits submitted on the hearing with the same force and effect as though the said proposed findings of fact and conclusions of law were submitted at the conclusion of the final hearing of this case and that such of the said proposed findings of fact and conclusions of law as shall be found by the court be deemed to have been found and filed nunc pro tunc as of the 15th day of October, 1934.

(3) That the complainant be deemed to have excepted to all findings of fact and conclusions of law found for the defendant and to any and all refusals to find as requested by it nunc pro tunc as of the date of the said Decree and that the defendant be deemed to have excepted to the findings of fact and conclusions of law found in behalf of the complainant and to any and all refusals to find as re-

quested by him nunc pro tunc as of the date of the said Decree and that the said exceptions be deemed to have been duly made.

(4) That the complainant be and hereby is allowed and permitted to file supplemental assignments of errors, assigning any additional errors as may be deemed necessary within five days after the findings of fact and conclusions of law have been duly made and found; the said supple-
[fol. 5] mental assignment of errors to be deemed to have been filed nunc pro tunc as of the date of the original assignment of errors filed herein.

(5) That the foregoing findings of fact and conclusions of law, with exceptions thereto, and supplemental assignment of errors together with this stipulation and any further orders of the Court on this stipulation shall be added to the transcript of the record and shall be made part of the record on this appeal.

(6) That the parties consent to the entry of such order or orders as will give effect to the provisions and purposes of this stipulation.

Dated New York, January 30th, 1935.

Miller, Paul & Placer, Attorneys for Complainant. David Blitzer, Harold H. Straus, Attorneys for Defendant. John J. Bennett, Jr., Attorney General of the State of New York.

[File endorsement omitted.]

[fol. 6] IN UNITED STATES DISTRICT COURT

[Title omitted]

COMPLAINANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed Feb. 16, 1935

The above entitled cause having come on regularly for hearing before Honorable H. T. Manton, H. P. Patterson, and Murray Hulbert, Judges of the above entitled Court, upon the application of the complainant for an order enjoining the defendant's enforcement of Chapter 781 of the

Laws of 1933 for the State of New York, and the provisions of the Code of Fair Competition for the Motor Vehicle Retailing Trade, more particularly the provisions of Article IV thereof, the complainant appearing by Miller, Paul & Placer, and the defendant, William C. Dodge, as [fol. 7] District Attorney for New York County of the State of New York, appearing by David Blitzer and Harold H. Straus, and the State of New York appearing by John J. Bennett, Jr., Attorney General of the State of New York, and Henry Epstein, Solicitor General, and thereupon evidence was introduced by the complainant in support of the allegations in its complaint, and by the defendant in opposition thereto, and in support of the defendant's application to dismiss the bill of complaint, and the National Recovery Administration appearing amicus curiæ, by Eugene Frederick Roth, Assistant Counsel, Litigation Division, National Recovery Administration, and the Court having duly heard and considered the evidence and the arguments of counsel, and being fully advised in the premises, makes the following

Findings of Fact

First. The complainant consents to defendant's Findings of Fact numbered "1st", "2nd", "3rd", "4th", "5th", "6th", "7th", "7-A", "8th", "9th", "10th", "11th", "12th", "13th", "14th", "15th", "17th", "18th", "19th", "20th", "21st", "22nd", "23rd", "24th", "29th", "30th", "31st", "32nd", "33rd", "34th", "45th", "47th", "48th", "49th", "50th", "51st", "52nd", "53rd", "54th", "55th", "57th", "58th", "60th", "68th", "69th", "70th", "71st", "72nd", "73rd", "74th", "77th", "78th", "79th", "80th", "81st", "82nd", "83rd", "86th", "87th" and "88th".

Second. That pursuant to the provisions of Chapter 781 of the Laws of the State of New York of 1933, it is a violation of the said Motor Vehicle Retailing Code and Chap- [fol. 8] ter 781 of the Laws of the State of New York of 1933, for any retail motor vehicle dealer to offer or give to a prospective customer as a trade-in allowance on the sale of a new motor vehicle, a price in excess of that established in the Official Guide Book and that such violation constitutes a misdemeanor punishable by a fine not exceeding $500.00, and imprisonment of not more than one day for

each dollar of fine imposed under the provisions of the Code of Criminal Procedure of the State of New York, and for each day such violation continues a separate offense deemed subject to the penalties hereinabove recited.

Third. That prior to the approval of the Code of Fair Competition for the Motor Vehicle Retailing Trade, and the filing of a certified copy of the aforesaid Code in the office of the Secretary of State of New York, and in the office of the Department of State thereof, pursuant to Chapter 781 of the Laws of 1933 for the State of New York, the complainant did offer to the public, its customers and patrons, actual, fair and honest market values for used automobiles that were offered to it by customers as trade-ins, on the purchase of new automobiles.

Fourth. That but for the adoption and approval of the Code of Fair Competition for the Motor Vehicle Retailing Trade, and but for the provisions therein contained establishing the maximum trade-in allowances in the official guide book, and but for the fact that Chapter 781 of the Laws of 1933 of the State of New York fixes a penalty not [fol. 9] exceeding $500.00 fine for each violation of the aforesaid provision of the Code of Fair Competition for the Motor Vehicle Retailing Trade, the complainant would continue to offer trade-in allowances in the sale of new cars which were fair and actual market prices thereof, and that the complainant would not in any wise be restricted from paying its customers fair, honest and actual market values on trade-ins.

Fifth. The automobile industry with its kindred industries, such as iron, steel, gasoline, rubber, plate-glass, nickel, lead, mohair and upholstery leather, directly or indirectly, is responsible for employing one out of every eleven workers employed in the United States.

Sixth. That prior to the adoption of the Code of Fair Competition for the Motor Vehicle Retailing Trade, the value of used cars offered for trade-ins by the public on the purchase of new automobiles, was determined by the dealers upon market values, physical condition, year, model, and make of automobile.

Seventh. No single motor vehicle retail dealer had a complete knowledge of the values of all the automobiles that

comprised the approximate five thousand different makes, models and series of cars in the hands of the public.

Eighth. Market reports of used cars sold, supplied the motor vehicle dealers with some basis for ascertaining the value of used cars in the hands of the public that may be [fol. 10] offered as trade-ins on the purchase of new automobiles, and that said market reports were based upon market conditions, supply and demand, and the actual fair value of trade-ins as determined by their physical condition, make, series and model. NOT FOUND

Ninth. Prior to the adoption of the aforesaid Code of Fair Competition, dealers ascertained from all available means the sales prices of used cars on the market and these prices were published in the form of Guide Books and sold to members of the Motor Vehicle Retailing Trade as an additional aid to them in the determination of trade-in values. The figures thus compiled were reflections of the market, but dealers were in no way bound competitively or otherwise, by them, and offered to the public on trade-ins what they considered to be the fair and actual value of the trade-in with the foregoing as an aid to them in such determination. NOT FOUND

Tenth. Pursuant to the provisions of Article IV of the Code of Fair Competition, the National Automobile Dealers Association, a trade association incorporated under the laws of the State of Illinois, with its principal office in St. Louis, Missouri, compiled an official guide known as the "Association Official Guide Book", which said Official Guide Book creates and establishes "average prices" for used motor vehicles, which said "average prices" represent the maximum allowance permitted to be paid to prospective purchasers on their used motor vehicles on a trade-in. FOUND

[fol. 11] Eleventh. Theoretically, this establishment of a maximum price for any particular model of automobile traded in for practical purposes, has become the maximum price for all automobiles traded in of the said particular model. NOT FOUND

Twelfth. Inasmuch as 85% of all transactions contemplate a trade-in, the fixing of such maximum prices for such trade-in, serves to fix the basis of the transaction and consequently, the price of a new car purchase. NOT FOUND

NOT FOUND

Thirteenth. While the Code of Fair Competition called for the establishment of "average prices" based upon actual used car sales, the National Automobile Dealers Association, the official reporting agency designated by the said Code, fixed arbitrary prices irrespective of actual reported sales.

NOT FOUND

Fourteenth. Without foundation in reason or cause, and without investigation the National Automobile Dealers Association returned used car sales reports duly authenticated, to dealers throughout the Nation and to the complainant advising them that such reports would not be considered in establishing an average.

NOT FOUND

Fifteenth. The officers of the National Automobile Dealers Association arbitrarily and unreasonably established fixed values on trade-ins and then utilized such reports submitted to them necessary to sustain their conclusion. All others were necessarily rejected.

[fol. 12] Sixteenth. That by allowing customers and patrons of the complainant, actual, fair and honest values on used cars or trade-ins on the purchase of new automobiles, such prices being higher or lower than the average fixed in the Official Guide, in accordance with the actual value of the car, complainant made and makes a fair return and profit on its investment.

FOUND

Seventeenth. That complainant, in the establishment and conduct of its business, has invested and expended in both physical assets and in the establishment and retention of intangible good will, vast and considerable sums of money which has resulted in the development of a patronage of great monetary value.

NOT FOUND

Eighteenth. By actual tabulation, the complainant, in its attempt to comply with the price provisions fixed in the Official Guide, has lost one hundred eighty sales of automobiles which were later consummated by other dealers at prices prohibited by the Code, the loss to the complainant in dollar volume being well in excess of $100,000. in sales.

NOT FOUND

Nineteenth. The enforcement of the provisions of Article IV of the Code of Fair Competition for the Motor Vehicle Retailing Trade, has occasioned great loss to the complainant, and if such provisions are to be further enforced, will

occasion further and additional loss and will effectually force the complainant out of business.

[fol. 13] Twentieth. That pursuant to the provisions of Article IV of the Code of Fair Competition, a customer desiring to trade in, is prohibited from receiving the actual, full and fair value of his traded in automobile by virtue of the maximum figures of the Official Guide, irrespective of the condition of the car, the style, make or model. NOT FOUND

Twenty-first. A traded in, used automobile, actually worth more than the average, cannot be traded in at a higher price than the maximum established in the Official Guide. NOT FOUND

Twenty-second. Owners of used cars are free to sell, as distinguished from trading in their automobiles, without restriction of any kind, to dealers exclusively engaged in purchasing and selling used cars at any price offered consonant with the condition of the used car, year, model, style and make, whereas motor vehicle dealers may not pay more than the maximum figure placed upon the said particular car in the Official Guide Book. FOUND

Twenty-third. The sales of used cars by the public to used car dealers instead of trading the same to dealers selling new cars, effectually reduces the purchases of new car dealers, and thereby deprives the said new car dealers of consummating sales on the trade-in plan, and from reselling at a profit the used cars traded in. NOT FOUND

[fol. 14] Twenty-fourth. The State of New York appointed no state agency to administer the provisions of the Code of Fair Competition for the Motor Vehicle Retailing Trade. NOT FOUND

Twenty-fifth. The State of New York appointed no state agency nor any Commission or body of its citizens to promulgate the Code of Fair Competition for the Motor Vehicle Retailing Trade. NOT FOUND

Twenty-sixth. The Legislature of the State of New York did not specifically enact the Code of Fair Competition for the Motor Vehicle Retailing Trade as and for its own Act. NOT FOUND

Twenty-seventh. No hearings before any legislative committee, nor any debates in the Legislature of the State of New York, were held on the question of adopting the Code NOT FOUND

of Fair Competition for the Motor Vehicle Retailing Trade for the State of New York.

NOT FOUND

Twenty-eighth. The Code of Fair Competition was not in existence when Chapter 781 of the Laws of 1933 of the State of New York, was enacted.

Twenty-ninth. Allowance of fair, actual and honest market values on used car trade-ins, is not an unfair, competitive practice.

NOT FOUND

Thirtieth. The State of New York, prior to the adoption of Chapter 781 of the Laws of 1933, at no time passed any legislation nor any other regulation regulating the Motor Vehicle Retailing Trade and prohibiting any of the practices which are now prohibited by Article IV of the Code of Fair Competition for the Motor Vehicle Retailing Trade.

FOUND

[fol. 15] Thirty-first. That the defendant as District Attorney of the County of New York, State of New York, will, unless restrained from so doing, institute criminal proceedings in a Court of competent jurisdiction, to enforce the provisions of the Code of Fair Competition for the Motor Vehicle Retailing Trade and the Official Guide, against the complainant herein, for its purported violation of the said Code and Official Guide, and in the event that complainant refuses to comply with the said pretended law, and in the event of conviction for such purported violation, complainant will be subject to the heavy penalties prescribed to be inflicted upon it by virtue of said Chapter 781 of the Laws of 1933, which said penalties, if complainant be compelled to pay, will be a deprivation of its rights, liberties, properties and immunities, without due process of law, as herein alleged.

NOT FOUND

Thirty-second. That in the event that complainant is compelled to abide by the provisions of the Code of Fair Competition for the Motor Vehicle Retailing Trade, more particularly by the prices fixed in the Official Guide Book, having apparent sanction of law pursuant to Chapter 781 of the Laws of 1933, and is compelled to charge the arbitrary, unreasonable, harsh, oppressive and inequitable prices purportedly fixed, promulgated, established and issued, complainant cannot continue in its aforesaid lawful business, in which event it will be deprived of its rights,

liberty, property, privileges and immunities, without due process of law.

[fol. 16] Thirty-third. That unless a permanent injunction be granted herein, the complainant will suffer irreparable damage of incalculable determination. NOT FOUND

Thirty-fourth. That Article IV of the Code of Fair Competition for the Motor Vehicle Retailing Trade abridges and denies the freedom of contract between motor vehicle retail dealers and customers desiring to trade in used cars on the trade-in plan, in that the motor vehicle retail dealer may not contract to allow more than the maximum price for the said trade-in as promulgated in the Official Guide Book. NOT FOUND

Thirty-fifth. That the complainant has no adequate remedy at law and can only have relief in a Court of Equity. FOUND

Conclusions of Law

That judgment be entered herein decreeing as follows:

1. That the Code of Fair Competition for the Motor Vehicle Retailing Trade, is null, void and invalid, having been adopted and approved by the President of the United States in violation of the National Industrial Recovery Act, more particularly Chapter 1 and Chapter 3a thereof.

2. That more particularly Article IV and said Official Guide Book as provided in said Article IV, is invalid, null, void and unconstitutional, being repugnant to the Fourteenth Amendment of the Constitution of the United States, and that the same deprives complainant of its rights, liberty and property without due process of law.

[fol. 17] 3. That Chapter 781 of the Laws of 1933 of the State of New York, is invalid, null, void, and unconstitutional, by reason of the illegal manner of enactment, as providing for excessive punishment, as an improper delegation of legislative function in violation of the Constitution of the State of New York, and repugnant to the Fourteenth Amendment of the Constitution of the United States in that it deprives the complainant of its rights and property without due process of law.

4. That Chapter 781 of the Laws of 1933 of the State of New York, the Code of Fair Competition for Motor Vehicle

Retailing Trade, and the Official Guide Book issued pursuant thereto, are invalid, null, void, and unconstitutional in that they deprive the complainant of its rights, liberty and property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

5. That the National Industrial Recovery Act, the Code of Fair Competition for the Motor Vehicle Retailing Trade and the Official Guide Book are invalid, null, void and unconstitutional in that the National Industrial Recovery Act was enacted by Congress in excess of the power granted to it by the Constitution of the United States, as providing for excessive punishment, as an improper delegation of legislative power by the Congress to the President, and as depriving the complainant of its rights, liberty and property, in derogation and violation of the Fifth Amendment to the Constitution of the United States.

6. That the defendant, William C. Dodge, as District Attorney for the County of New York, State of New York, his successors, assistants, deputies, agents and employees be temporarily and permanently enjoined from in any way or manner enforcing against the complainant any of the provisions of the Code of Fair Competition for the Motor Vehicle Retailing Trade, more particularly the provisions of Article IV thereof, and any order, rule or regulation that may be issued thereunder or that has been issued thereunder or any of the price regulations fixed and promulgated in the Official Guide Book as provided by Article IV of the Code of Fair Competition for the Motor Vehicle Retailing Trade or any part or parts thereof, and from instituting or causing to be instituted any suit at law or in equity, prose-
[fols. 18 & 19] cution or proceeding or otherwise as the case may be against the complainant herein for any alleged violation of any of the provisions of the said Code of Fair Competition for the Motor Vehicle Retailing Trade under Chapter 781 of the Laws of 1933 of the State of New York.

Ordered, that judgment be entered accordingly.

Martin T. Manton, Circuit Judge; Robert P. Patterson, District Judge; Murray Hulbert, District Judge.

[File endorsement omitted.]

[fol. 20] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed Feb. 16, 1935

The above entitled cause having come on regularly for hearing before Honorable M. T. Manton, R. P. Patterson and Murray Hulbert, Judges of the above entitled Court, upon the application of the complainant for an order enjoining the defendant's enforcement of Chapter 781 of the Laws of 1933 for the State of New York and the provisions of the Code of Fair Competition for the Motor Vehicle Retailing Trade, more particularly the provisions of Article IV thereof, the complainant appearing by Miller, Paul & Placer, and the defendant, William C. Dodge, as District Attorney for New York County of the State of New York, appearing by David Blitzer and Harold H. Straus, and the State of New York appearing by John J. Bennett, Jr., At-[fol. 21] torney General of the State of New York, and Henry Epstein, Solicitor General, and thereupon evidence was introduced by the complainant in support of the allegations in its complaint, and by the defendant in opposition thereto and in support of the defendant's application to dismiss the bill of complaint, and the National Recovery Administration appearing amicus curiæ, by Eugene Frederick Roth, Assistant Counsel, Litigation Division, National Recovery Administration, and the Court having duly heard and considered the evidence and the arguments of counsel, and being fully advised in the premises, makes the following

Findings of Fact

First. The complainant, Spielman Motor Sales Co. Inc., is a New York corporation engaged in the business of motor vehicle retailing as defined in the Code of Fair Competition for the Motor Vehicle Retailing Trade, doing [illegible]siness in the State of New York and with its places of business located in the City of New York.

Agreed.

Second. The complainant is one of the largest motor vehicle retail dealers in the City of New York, operating

four branches besides its principal place of business, and employing approximately 80 employees.

Agreed.

Third. The defendant, William C. Dodge, is the duly elected District Attorney for the County of New York, State of New York.

Agreed.

Fourth. Under and by virtue of the several laws of the State of New York, it is the duty of the defendant, William C. Dodge, as such District Attorney for the County of New York, to prosecute in an official capacity all violations of law and public offenses.

Agreed.

[fol. 22] Fifth. On or about the 16th day of June, 1933, there was enacted by the Congress and President of the United States a law entitled "National Industrial Recovery Act."

Agreed.

Sixth. On or about the 26th day of August, 1933, there was enacted by the State of New York a law entitled "Laws of 1933, Chapter 781."

Agreed

Seventh. At the time of the enactment of both the National Industrial Recovery Act and Chapter 781 of the Laws of 1933 of the State of New York, there existed both a national and state emergency based upon the widespread bankruptcy of business, mounting unemployment and the general prostration of industry.

Agreed.

Seventh A. That thereafter and pursuant to the provisions of the National Industrial Recovery Act, a Code of Fair Competition for the Motor Vehicle Retailing Trade was approved October 3, 1933, by the President.

Agreed.

Eighth. On or about the 5th day of December, 1933, pursuant to the provisions of Chapter 781 of the Laws of 1933

for the State of New York, a certified copy of the Code of Fair Competition for the Motor Vehicle Retailing Trade was filed in the office of the Secretary of State and in the office of the Department of State thereof; that by reason thereof the said Code became the standard of fair competition for the Motor Vehicle Retailing Trade of the State of New York. That said Code of Fair Competition is hereto annexed marked "Exhibit A."

Agreed.

Ninth. That pursuant to the provisions of Chapter 781 of the Laws of the State of New York of 1933, it is a violation of the said Motor Vehicle Retailing Code and Chapter 781 of the Laws of the State of New York of 1933, for any retail motor vehicle dealer to offer or give to a prospective customer as a trade-in allowance on the sale of a new motor [fol. 23] vehicle, a price in excess of that established in the official Guide Book, and that such violation constitutes a misdemeanor punishable by a fine not exceeding $500.00, and imprisonment of not more than one day for each dollar of fine imposed under the provisions of the Code of Criminal Procedure of the State of New York, and for each day such violation continues a separate offense is deemed subject to the penalties hereinabove recited.

Agreed.

Tenth. That on or about the 7th day of July, 1934, the defendant openly and publicly proclaimed to the complainant that he was prepared and ready, through his office as the District Attorney for the County of New York, State of New York, to institute a criminal prosecution against the complainant herein for alleged violations of the provisions of the Code of Fair Competition for the Motor Vehicle Retailing Trade, more particularly for violations of Article IV, Subdivision A, Paragraph 1, and Article IV, Subdivision B, paragraph 2.

Agreed.

Eleventh. That pursuant to the authority of Chapter 781 of the Laws of 1933 of the State of New York, on or about the 7th day of July, 1934, an application was made by the defendant, William C. Dodge, and his several assistants, to a Magistrate of the City of New York, County of New York,

in the name of the People of the State of New York, for the issuance by said Magistrate of a summons directing and requiring the Spielman Motor Sales Co. Inc. to appear before the said City Magistrate, or any City Magistrate holding court, at the City Magistrate's Court at 301 Mott Street, in the Borough of Manhattan, City, County and State of New York, on the 9th day of July, 1934, at ten o'clock A. M., to the end that investigation be made of an alleged complaint against the Spielman Motor Sales Co. Inc. for purported [fol. 24] violations of the provisions of the Motor Vehicle Retailing Code; that upon such investigation, an information be drawn against the complainant herein for alleged violation, charging it with the violation of the aforesaid provisions of the Motor Vehicle Retailing Code.

Agreed.

Twelfth. That prior to the enactment of the Code of Fair Competition for the Motor Vehicle Retailing Trade, and the filing of a certified copy of the aforesaid Code in the office of the Secretary of the State of New York, in the office of the Department of State thereof, pursuant to Chapter 781 of the Laws of 1933 for the State of New York, Spielman Motor Sales Co. Inc. was restricted only by its own sense of discretion in offering trade-in allowances on used cars to prospective customers in the sale of new automobiles, without legal restriction.

Agreed.

Thirteenth. That but for the adoption and approval of the Code of Fair Competition for the Motor Vehicle Retailing Trade, and but for the provisions therein contained establishing the maximum trade-in allowances in the official guide book, and but for the fact that Chapter 781 of the Laws of 1933 of the State of New York fix a penalty not exceeding $500.00 fine for each violation of the aforesaid provisions of the Code of Fair Competition for the Motor Vehicle Retailing Trade, the complainant could continue to offer trade-in allowances in the sale of new cars without restriction, except by its own sense of discretion.

Agreed.

Fourteenth. The Motor Vehicle Retailing Trade is one upon which many other industries are primarily dependent for their existence.

Agreed.

[fol. 25] Fifteenth. The Motor Vehicle Retailing Trade is an integral part of the Motor Vehicle Manufacturing Industry which is directly dependent upon the Motor Vehicle Retailing Trade for the sale of its commodities.

Agreed.

Sixteenth. The automobile industry with its kindred industries, such as iron, steel, gasoline, rubber, plate-glass, nickel, lead, mohair and upholstery leather, directly or indirectly, is responsible for employing one out of every eleven workers employed in the United States.

Disputed. Agreed.

Seventeenth. Every State in the United States supplies materials used in the automobile industry.

Agreed.

Eighteenth. The automobile industry employs directly or indirectly over four million persons.

Agreed.

Ninteenth. The automobile industry ranks first as a consumer of iron and steel, gasoline, rubber, plate-glass, nickel, lead, mohair and upholstery leather and consumes approxmately 14.5% of all the lumber used in the United States.

Agreed.

Twentieth. In 1929 there were approximately 44,000 motor vehicle retail dealers in the United States.

Agreed.

Twenty-first. In 1929 the net sales of new and used car dealers were in excess of $6,200,000,000.00.

Agreed.

Twenty-second. In 1929 the Motor Vehicle Retailing Trade employed approximately 330,617 full time employees and 11,413 part time employees.

Agreed.

Twenty-third. During the past ten years the business of the Motor Vehicle Retailing Trade has experienced a sharp

transition. From 22 used cars accepted in trade-in for every 100 new cars sold there are now and have been for [fol. 26] the past few years approximately 85 used cars accepted in trade-in for every 100 new cars sold.

Agreed.

Twenty-fourth. 85% of all sales made by the Motor Vehicle Retailing Trade are based on trade-in allowances on used cars.

Agreed.

Twenty-fifth. In the economic paralysis of the industries of the United States that occurred after 1929 the Motor Vehicle Retailing Trade suffered severely. Dealers sought every competitive advantage in order to remain in business.

Disputed. FOUND

Twenty-sixth. The most serious and injurious unfair competitive practice employed was the practice of accepting used cars upon a trade-in allowance far in excess of their actual resale value.

Disputed. FOUND

Twenty-seventh. The economic depression that resulted after 1929 intensified and inflamed this destructive competitive practice of granting excessive trade-in allowance in the sale of new automobiles to the point where it threatened extinction and bankruptcy to the industry.

Disputed. FOUND

Twenty-eighth. That serious consequences of this uncontrolled destructive competition were fully manifested prior to the adoption of the Code of Fair Competition for the Motor Vehicle Retailing Trade.

Disputed. FOUND

Twenty-ninth. The number of motor vehicle retail dealers engaged in the motor vehicle retailing trade was reduced from a total of 44,000 in 1929 to a total of 32,000 dealers engaged in the motor vehicle retailing trade in 1932.

Agreed.

[fol. 27] Thirtieth. The volume of business and value of

sales of the motor vehicle retailing trade diminished approximately 75% between 1929 and 1932.

Agreed.

Thirty-first. In 1929 over 5,600,000 motor vehicles were sold by manufacturers at a valuation in excess of $3,500,000,000.00.

Agreed.

Thirty-second. In 1932 approximately 1,400,000 new motor vehicles were sold by manufacturers at a valuation of approximately $793,000,000.00.

Agreed.

Thirty-third. The capital investment of the Motor Vehicle Retailing Trade was substantially reduced between 1929 and 1932.

Agreed.

Thirty-fourth. In 1932 the average hour wage rate for employees of the Motor Vehicle Retailing Trade had diminished approximately 47% in comparison to the wages paid in 1929. The Motor Vehicle Retailing Trade employed 87,891 fewer persons than those employed in 1929.

Agreed.

Thirty-fifth. The competitive abuse of granting excessive trade-in allowance was one of the major factors that caused the bankruptcy of a large portion of the members of the trade and threatened the balance of the trade with imminent bankruptcy.

Disputed. FOUND

Thirty-sixth. The general effect of the competitive practice of granting excessive allowances on trade-ins in the sale of new automobiles was to disorganize and disrupt the industry and cause a sharp and drastic reduction of the wage and labor standards through-t the industry.

Disputed. FOUND

[fol. 28] Thirty-seventh. The destruction of the Motor Vehicle Retailing Trade was reflected by the condition of the motor vehicle manufacturing industry which in 1929

employed 427,459 employees who received a total of $775,178,810.00 in wages, and in 1932 employed 229,800 employees whose wages totaled the sum of $282,929,302.00.

Disputed. FOUND

Thirty-eighth. Communities throughout the United States were seriously affected by the disintegration of the Motor Vehicle Retailing Trade, both through individuals unemployed, vacant stores and real estate, and in the general reduction of business activity.

Disputed. FOUND

Thirty-ninth. The vast number of motor vehicle retail dealers and their wide-spread location throughout the United States made impossible any effectual effort at self regulation in eliminating the destructive competitive practice of granting excessive allowances on trade-ins for new automobiles.

Disputed. FOUND

Fortieth. Efforts made by State and Local governments alone failed to prevent reductions in wage rates and proved ineffectual in curbing further increases in unemployment.

Disputed. FOUND

Forty-first. The Motor Vehicle Retailing Trade spread throughout the country, located in large cities and small villages, could not be regulated effectively by State legislation alone but required the cooperation of both the State and Federal government.

Disputed. FOUND

Forty-second. The improved labor standards both in the reduction of working hours and the increase in compensation provided for by the Motor Vehicle Retailing Trade Code could not effectively be maintained unless the com- [fol. 29] petitive evil of granting excessive trade-in allowances could be reasonably regulated.

Disputed. FOUND

Forty-third. The inability of the Motor Vehicle Retailing Trade to support fair labor standards because of the huge losses it sustained through excessive and unwarranted

trade-in allowances caused the President of the United States to approve and include Article IV in the Code of Fair Competition for the Motor Vehicle Retailing Trade.

Disputed. FOUND

Forty-fourth. The intendment of Article IV of the Code of Fair Competition for the Motor Vehicle Retailing Trade is not only to correct and curb the grave trade abuse which had developed in serious and menacing proportions as a form of secret rebate and exorbitant discount granted to purchasers as trade-in allowances, but primarily to insure the ability of the Motor Vehicle Dealers to pay to labor the increased compensation provided for in the aforesaid Code of Fair Competition.

Disputed. FOUND

Forty-fifth. There are more than five thousand makes, models and series of used cars in the hands of the public.

Agreed.

Forty-sixth. Prior to the adoption of the Code of Fair Competition for the Motor Vehicle Retailing Trade, there was no reliable means of establishing the reasonable value of the more than five thousand different makes, models and series of used cars in the hands of the public.

Disputed. FOUND

Forty-seventh. No single Motor Vehicle Retail Dealer has a complete knowledge of the values of the automobiles that comprise the five thousand different makes, models and series of cars in the hands of the public.

Agreed.

[fol. 30] Forty-eighth. Prior to the adoption of the aforesaid Code of Fair Competition reports of used cars sold supplied the Motor Vehicle Retail dealers with some basis for ascertaining the value of the large number of used cars in the hands of the public that may be offered in trade in the purchases of new automobiles.

Agreed.

Forty-ninth. Prior to the adoption of the aforesaid Code of Fair Competition certain business firms ascertained from

the avalable means at their disposal the sales prices of used cars sold. These prices were then averaged and published in the form of guide books, which were sold to members of the Motor Vehicle Retailing Trade.

Agreed.

Fiftieth. The better known guide books were employed by Insurance Companies for their own purposes as a basis for ascertaining the value of automobiles in the hands of the public.

Agreed.

Fifty-first. Prior to the adoption of the aforesaid Code of Fair Competition the better known guide books were accepted as some evidence of market values of used automobiles in many if not all of the Courts of the country.

Agreed.

Fifty-second. Prior to the adoption of the aforesaid Code of Fair Competition credit organizations, banks, insurance companies and Courts of law accepted the published values of reputable concerns who collected statistics covering the sale of used cars as some evidence of correct appraisal values of the type and model of cars reported.

Agreed.

Fifty-third. The method employed in the original Guide Books is greatly emplified and definitely regulated by the Code of Fair Competition for the Motor Vehicle Retailing [fol. 31] Trade by requiring all motor vehicle dealers to submit sworn reports of the sales of their used automobiles.

Agreed.

Fifty-fourth. Article IV of the Code of Fair Competition for the Motor Vehicle Retailing Trade requires that in the compilation of the average trade-in figures that the lowest 20% of all sales reported shall be eliminated.

Agreed.

Fifty-fifth. The deletion of the low 20% of used car sales reported as provided for by the aforesaid Code of Fair Competition eliminates from use in the average final tabulation published in the Official Guide Book many sales which

run within a few dollars of the median average of all sales reported.

Agreed.

Fifty-sixth. The elimination of the low 20% from use in the average final tabulation directly causes the tabulated figure which is published in the official Guide Book to be placed higher up in the bracket of sales recorded of the highest value.

Disputed. FOUND

Fifty-seventh. The sales reported occur during the prior sixty day period and become applicable for the subsequent thirty day period but no allowance for depreciation is provided. Used cars depreciate at the rate of 2% to 3½% per month.

Agreed.

Fifty-eighth. The method provided by the aforesaid Code of Fair Competition provides for a compilation of sales for the sixty day period preceding. The element of depreciation is not included and is a factor that insures a high maximum figure when published in the Official Guide Book.

Agreed.

[fol. 32] Fifty-ninth. When the used car market rises the Official Guide Book responds to the change as the calculations are based on 60 day periods and the publication of figures is made each thirty days creating an overlap which brings into the official Guide Book each 30 days changes occurring in the market.

Disputed. FOUND

Sixtieth. The Code of Fair Competition for the Motor Vehicle Retailing Trade provides for the operation of Article IV subject to the supervision of the National Recovery Administration.

Agreed to.

Sixty-first. The power of establishing maximum trade-in allowances through Article IV of the aforesaid Code of Fair Competition is placed directly in the hands of the

consuming public as its basis is the sales price made by the purchases of the consuming public.

Disputed. FOUND

Sixty-second. The National Automobile Dealers Association the agency designate- in the aforesaid Code of Fair Competition did not fix arbitrary prices without regard to reported sales. The National Automobile Dealers Association performed its duty of collecting and securing the sworn reports of sales of used cars conscientiously and complied completely both with the spirit and language of Article IV of the aforesaid Code in arriving at the Guide Book Allowance which was published.

Disputed. FOUND

Sixty-third. Sales of used cars made by the complainant during the period of the Code and reported to the National Automobile Dealers Association clearly indicates that the prices published in the official Guide Book were too high instead of not high enough.

Disputed. FOUND

Sixty-fourth. Complainant has failed to show by specific instance that unreasonable differences exist between the maximum trade-in allowance permitted under the aforesaid [fol. 33] Code of Fair Competition and the real market value.

Disputed. FOUND

Sixty-fifth. The trade-in allowance represents an equivalent in dollars and cents of part of the sales price of the new automobile. The comprehensive reporting system provided in Article IV of the aforesaid Code fixes a fair value in terms of money on used cars offered in trade as part consideration in the purchases of new automobiles.

Disputed. FOUND

Sixty-sixth. The mechanism provided in Article IV of the aforesaid Code in effect translates into dollars and cents value for the Motor Vehicle Retail Dealer the commodity, the used car, that prior thereto possessed an uncertain and fluctuating value.

Disputed. FOUND

Sixty-seventh. No evidence has been offered by the complainant in support of its charge that it lost sales by reason of the fact that the official Guide Book Trade-in allowance was not fair.

Disputed. FOUND

Sixty-eighth. That prior to the adoption of the Code of Fair Competition for the Motor Vehicle Retailing Trade, the Retail Motor Vehicle Dealers were compelled to respect the sales prices established by the manufacturers of new motor vehicles and maintenances of price by automobile manufacturers through contractual arrangements with dealers or agents has long existed in the trade.

Agreed to.

Sixty-ninth. The manufacturer- of automobiles are not subject to the terms of the Code of Fair Competition for the Motor Vehicle Retailing Trade and each manufacturer has complete control of the price of his product and may increase or lower his price to meet the competitive forces of his fellow manufacturers. The factory made prices of new cars of different makes are highly competitive.

Agreed to.

[fol. 34] Seventieth. The complainant has not set forth or complained of an instance where it endeavored to sell a new Chevrolet automobile openly in competition with other Chevrolet dealers at less than factory established prices.

Agreed to.

Seventy-first. Motor Vehicle Retail Dealers are not restricted by the aforesaid Code of Fair Competition in making the best deal possible under the maximum figure provided in the official Guide Book.

Agreed.

Seventy-second. Article IV of the Code of Fair Competition for the Motor Vehicle Retailing Trade imposes no requirement that compels the owner of an old car to sell it at any particular price. It does not compel the dealer if he becomes the owner of a used car to resell it at any particular price. It applies in a transaction between a dealer

and a prospective purchaser when that purchaser offers an old care as part of the consideration for a new automobile.

Agreed.

Seventy-third. The Motor Vehicle Retail dealers are free to resell to the public used cars without restriction as to the price they may secure.

Agreed.

Seventy-fourth. Owners of used cars are free to sell (as distinguished from trade-in) their automobiles without restriction of any kind through either the substantial number of dealers exclusively engaged in the used car business or directly to other persons who desire to purchase used automobiles.

Agreed.

Seventy-fifth. Complainant has not produced any evidence of a single instance where a used car owner has received more through the channels of the free market of the used car dealers than the Official Guide Book figures provided.

Disputed. FOUND

Seventy-sixth. There has been a substantial improvement both in business and in employment in the Motor Ve- [fol. 35] hicle Retailing Trade since the adoption of the aforesaid Code of Fair Competition.

Disputed. FOUND

Seventy-seventh. The employment figures for members of the National Automobile Chamber of Commerce for May, 1933, showed 99,343 employees; for May, 1934, 206,965 employees.

Agreed.

Seventy-eighth. In the first six months of 1932 a total of 663,625 registrations for new cars were made. For the first six months of 1934 there have been 995,121 registrations of new cars made.

Agreed.

Seventy-ninth. The monthly retail sales of motor vehicles in the United States for the calendar year 1933 and for the months from January to June, 1934, are as follows:

1933:	Total motor vehicles	
January	94,214	
February	81,503	
March	97,731	
April	148,833	
May	192,076	
June	226,154	
July	206,825	
August	213,279	
September	181,629	
October	158,573	
November	112,559	
December	69,471	
Total		1,782,847

1934:	Total motor vehicles	
January	89,982	
February	143,721	
March	232,485	
April	273,943	
May	256,201	
June	276,111	
Total		1,272,443

Agreed.

[fol. 36] Eightieth. On August 30, 1933, an application for a Code of Fair Competition and a proposed Code of Fair Competition for the Motor Vehicle Retailing Industry were submitted by the National Automobile Dealers Association, through a Committee appointed by them for that purpose, an organization shown to represent approximately 75% of

the members of that industry (later representing approximately 96% of the members of the industry). The proposed Code was referred to members of the Industry and local organizations interested in the Code, and revised by the National Automobile Dealers Association in accordance with suggestions submitted.

Agreed.

Eighty-first. The complainant has been a member of the Brooklyn Motor Dealers Association since January 14, 1925, and was a member in good standing at the time of the institution of this action. The complainant was also a member of the Empire State Association which on behalf of many motor vehicle retail dealers in New York State sponsored the proposed Code of Fair Competition for the Motor Vehicle Retailing Trade. Both said Brooklyn Motor Vehicle Dealers Association and said Empire State Association were members of the National Automobile Dealers Association.

Agreed.

Eighty-second. On September 7, 1933, a proposed Code approved by representative members of the Association was filed with the National Recovery Administration. The filing of the proposed Code was announced by a Press Release #679, which was issued on September 8, 1933, a copy of said release being as follows:

[fol. 37] National Recovery Administration

Immediate Release, September 8, 1933. Release #679

Motor Vehicle Retailing Trade Code

The National Recovery Administration to-day announced that public hearing will be held Monday, September 18, in Department of Commerce Building on the Motor Vehicle Retailing Trade Code filed by the National Automobile Dealers Association, claiming to represent 75% of the total volume of the industry. Deputy Administrator W. R. Lea will preside.

The Code provides a maximum work week of 45 hours, except for salesmen and watchmen, and 52 hours operation for place of business. Maximum hours do not apply to executives and managing employees receiving $25.00 a week

or more, or to emergency workers, but in these cases the average over 6 weeks is not to exceed 48 hours.

Minimum wage is fixed at $15 a week in cities of over 500,000 population, scaled down to $12 a week in towns less than 2,500 population. Full time outside salesmen with unrestricted hours and on commission basis are guaranteed a drawing account of not less than $17.50 a week in cities of 500,000, scaled down to $10 a week in towns of less than 2,500. For mechanics, the minimum wage is 50 cents an hour unless below that rate on July 15, 1929, and in no case less than 30 cents an hour.

Agreed.

[fol. 38] Eighty-third. A public hearing on the proposed Code was set for September 18, 1933, and Notice thereof was mailed to all persons, firms and organizations known to be interested. A copy of said Notice was also placed in all United States Post Offices above the third class and inserted in Trade Journals. A copy was also posted on the official bulletin board of the National Recovery Administration. A copy of said Notice of Hearing is as follows:

"National Recovery Administration

Notice of Hearing No. 99

September 8, 1933.

Motor Vehicle Retailing Trade:

The above industry, as represented by the National Automobile Dealers Association, claiming to represent 75% of the industry has submitted a proposed Basic Code of Fair Competition, copies of which are available at the office of the National Recovery Administration, Room 3316, Department of Commerce, Washington, D. C.

The Code for the Motor Vehicle Retailing Trade in its present form merely reflects the proposal of the above mentioned industry, and noen of the provisions contained therein are to be regarded as having the approval of the National Recovery Administration as applying to this industry.

Notice is hereby given that a Public Hearing on this Code will be conducted by the Administrator, beginning at 10:00 A. M., Monday, September 18, 1935, in the Garden

Room, Mayflower Hotel, Washington, D. C., and continuing until completed. An opportunity to be heard (either in person or by duly appointed representative either by appearance or by sending a written or telegraphic statement) will be given to persons or groups who can show a substantial interest as workers, employers, consumers or otherwise, in the effect of any provision of the proposed Code.

Those wishing to be heard must comply with the following simple requirements:

(1) A written or telegraphic request for an opportunity to be heard must be filed before noon on Saturday, September 16th, 1933, with the Administrator, Room 4034, Department of Commerce, Washington, D. C.

(2) Such request shall state the name of (a) any person seeking to testify in the hearing, and (b) the persons or groups whom he represents.

(3) Such request shall contain a statement setting forth without argument, a proposal: (1) for the elimination of a specific provision of the Code: or (2) a modification of a specific provision, in language proposed by the witnesses, or (3) a provision to be added to the Code, in language proposed by the witness.

[fol. 39] (4) At the Public Hearing, all persons are to be regarded as witnesses, and shall present orally facts only and not argument. Written briefs or arguments may be filed, but oral presentations will be confined to factual statements only.

(5) In the discretion of the Deputy Administrator in charge of the Hearing, persons who have not complied with the requirements of paragraph (1) above, may be permitted at any time prior to the close of the Hearing to file written statements containing proposals for eliminations from, modifications of, or additions to the code supported by pertinent information or argument. Such written statements must be condensed as much as possible.

Public Hearings are solely for the purpose of obtaining in the most direct manner the facts useful to the Administrator, and no arguments will be heard or considered at this time. Representation of interest- parties by attorneys or specialists is permissible, but it is not to be regarded as

necessary. Industry, workers and the consuming public will be represented by special advisers employed by the Government.

R. W. Lea,
Deputy Administrator.

Hugh S. Johnson,
Administrator."

Agreed.

Eighty-fourth. Hearing upon the proposed Code was held on September 18, 1933, in the Garden Room of the Mayflower Hotel, Washington, D. C., with Deputy Administrator R. W. Lea presiding. The meeting was attended by representative delegations from the Industry. Evidence was offered of the Breakdown of the economic functions of the Industry. Proof was furnished that the Industry could not support an increase in the cost of its operation and performance of higher wages and shorter hours unless the destructive price cutting in the form of overallowances granted on trade-ins could be curbed and the resulting depreciation of the capital of the Industry stopped. All representatives, including representatives of labor organizations and all employees in the Industry, were given every opportunity to be heard and afforded ample time to discuss all features of the proposed Code. Briefs from representatives not attending were read into the record.

Disputed. FOUND

[fol. 40] Eighty-fifth. After adjournment of the public hearing a series of conferences between members of the Industry and representatives of the Industry were held with the National Recovery Administration. At these conferences the matter of used car allowances and appraisals were thoroughly investigated by the National Recovery Administration and the proposed Code was thereupon revised in accordance with the findings based upon all of the testimony, both oral and written, introduced during the course of the public hearing and the conferences. The revised Code was thereupon approved by sponsoring associations who represented a majority of the members of the Trade.

Disputed. FOUND

Eighty-sixth: On September 26, 1933, R. W. Lea, Deputy Administrator, submitted a report to Hugh S. Johnson,

Administrator, on the hearing and other proceedings had in connection with the proposed Code and transmitted the final draft of the proposed code with certain findings and the recommendation that the same be approved. A copy of the report of Deputy Administrator Lea is as follows:

"September 26, 1933.

To General Hugh S. Johnson, Administrator.
From R. W. Lea, Deputy Administrator.

I have the honor to submit herewith my report on the Code of Fair Competition for the Motor Vehicle Retailing Trade, the hearings for which were held in Washington, D. C., September 18, 1933, in accordance with provisions of the National Industrial Recovery Act.

The following exhibits are submitted:

1. Final Code submitted.

2. Approvals and Reports of the Industrial, Labor and Consumers Advisory Boards, the Legal Division and the Research and Planning Division.

3. Original letter of transmittal from the Trade.

4. Assent of the Trade to Final Code submitted.

5. Notice of Hearing, and Statement of Procedure.

[fol. 41] 6. List of Witnesses.

7. Constitution and By-Laws of the National Automobile Dealers Association.

8. *Transcript and Appendix.*

In accordance with the customary procedure, every person who filed an appearance was fairly heard. Also, any persons who had failed to file appearance in accordance with the Notice of Hearing, were permitted to file written briefs. All statutory and regulatory requirements were complied with.

The Code is submitted by the National Automobile Dealers' Association, which represents approximately 75% of the Dollar Volume of new and used car sales, and, according to the statement of the Association, approxamitely 75% of the units in the Trade.

From the above, it will be seen that the statutory requirement of sufficient representation has been fully complied with.

Present Condition of Trade

Beginning in 1930, the sales volume in the Motor Vehicle Retailing Trade has shown a steady decline. Sales in 1929, according to the Bureau of Census, were in excess of Six Billion, One Hundred Million Dollars. In 1932, sales amounted to 33⅓% of the 1929 figure, or approximately Two Billion Dollars.

Unsound trade practices have resulted from the dealers efforts to maintain a satisfactory volume of sales. As the result of these practices, it is claimed that approximately 90% of the motor vehicle dealers, empl-ying more than 250,000 workers, are insolvent.

It may safely be said that practically every motor vehicle dealer has developed, as the result of the highly competitive nature of this business, an increasing tendency toward an allowance for a prospective customer's old car greater than it can be sold for. This condition has become increasingly serious, and a ruinous form of price cutting.

Another factor which has been instrumental in bringing about this condition, is the offering for sale by individuals, of cars represented as new, which in fact are not new. Usually they have been driven more than 1,000 miles cross country. These cars are purchased from dealers in distress, and driven to distant points, removed from the place of purchase, frequently at a profit, through carrying passengers for hire, and offered for sale in locations adjacent to an enfranchised dealer for the same make of car, at a price generally below the dealers' cost. This condition is not only serious from the standpoint of the dealers, but also from the consumers, as the cars are misrepresented as new vehicles.

Article I

Purpose

This article needs no discussion.

Article II

Definitions

[fol. 42] The terms "Motor Vehicle Retailing" coyers the retailing, servicing or repairing of both new and used motor vehicles by either new vehicle dealers or used vehicle dealers.

Article III

Employment Regulations

At the conference between the Trade and the Administrator and his advisors, an agreement was reached on the wages and hour provisions which have been incorporated in the Code.

Included among the provisions agreed upon was a provision specifying a guaranteed minimum weekly wage for all productive and office employees, except outside salesmen, regardless of the method of compensation.

A provision guaranteeing outside salesmen a definite weekly drawing account places these employees on a drawing account basis instead of a purely commission basis which had become the practice in recent years.

As the result of the maximum hour limitations specified in the Code, the increase in employment in the Trade will fall somewhere between 10% as estimated by the Trade and 20% as estimated by the Industrial advisors, or increased employment between 26,000 and 52,000 workers.

Provision has been made in the Code for the equitably adjustment of all wages above the minimum.

No person under 16 years of age shall be employed by the Trade.

There is no discrimination between male and female employees.

Employees are protected from declassification with intent to frustrate the purpose of the Code.

Article IV

Trade Regulations

In order to prevent the unsound practices described above, an equitable formula is provided controlling allow-

ances on used cars, which in order not to unduly penalize the consumer, eliminates from consideration in applying the formula such vehicles as are in extremely bad condition as the result of abuses.

Values so determined shall be published every 60 days in an Official Guide.

Contrary to the present custom of charging an arbitrary sum for freight and delivery expenses, the Code provides that only the actual cost of transportation and other delivery expenses shall be charged.

Articles V, VI and VIII

Administration

This Trade is made up of a great number of dealers of two classes, namely new car dealers and independent used car dealers.

Proper representation, for both classes of dealers, has been provided on all administrative committees.

[fol. 43]

Article IX

General

I find that:

(a) The Code complies in all respects with the pertinent provisions of Title I of the Act, including without limitation, sub-section (a) of Section 7, and sub-section (b) of Section 10, thereof; and that

(b) That National Automobile Dealers Association requires no inequitable restrictions on admission to membership therein and is truly representative of the Motor Vehicle Retailing Trade; and that

(c) The Code is not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of Title I of the National Industrial Recovery Act.

Conclusion

Giving full consideration to all factors involved in this Trade, and after careful study of the problems from a

broad business viewpoint, I believe this Code effectuates the purposes of the National Industrial Recovery Act, and I therefore recommend its approval.

Respectfully submitted, (S.) R. W. Lea, Deputy Administrator.

Agreed

[fol. 44] Eighty-seventh: On September 29th, 1933, Hugh S. Johnson, Administrator, forwarded the proposed Code, as revised, to the President, with a letter of transmittal recommending the proposed Code be approved. The letter of the Administrator referred to the report of Deputy Administrator Lea which was transmitted to the President. On October 3, 1933, the President approved the Code of Fair Competition for the Motor Vehicle Retailing Trade. A copy of the Administrator's letter of transmittal and of the Executive Order approving the Code are as follows:

Agreed.

"September 20, 1933.

The President, The White House.

My Dear Mr. President:

I have the honor to submit and recommend for your approval, the Code of Fair Competiion for the Motor Vehicle Retailing Trade. The Code has been approved by the Industrial Advisory Board, the Labor Advisory Board, and the Consumers' Advisory Board.

An analysis of the provisions of the Code has been made by the Administration and a complete report is being transmitted to you.

I find that the Code complies with the requirements of clauses 1 and 2, sub-section (a) of section 3 of the National Industrial Recovery Act.

I am, my dear Mr. President,

Very sincerely yours, Hugh S. Johnson, Administrator."

"Executive Order

"An application having been duly made, pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for my approval of a Code of Fair Competition for the Motor Vehicle Retailing Trade, and hearings having

been held thereon and the Administrator having rendered [fol. 45] his report containing an analysis of the said Code of Fair Competition together with his recommendations and findings with respect thereto, and the Administrator having found that the said Code of Fair Competition complies in all respects with the pertinent provisions of Title I of said Act and that the requirements of clauses (1) and (2) of sub-section (a) of Section 3 of the said Act have been met:

Now, therefore, I, Franklin D. Roosevelt, President of the United States, pursuant to the authority vested in me by Title I of the National Industrial Recovery Act, approved June 16, 1933, and otherwise do adopt and approve the report, recommendations, and findings of the Administrator and do order that the said Code of Fair Competition be and it is hereby approved.

Franklin D. Roosevelt.

Approval recommended:

Hugh S. Johnson, Administrator.

The White House, October 3, 1933."

Eighty-eighth. Pursuant to Articles V, VI, and VIII of the approved Code there were duly created State Advisory Committees, an Emergency National Committee and the National Control Committee and the membership thereof were selected in accordance with the Code provisions and same duly approved by the National Recovery Administration.

Agreed.

Eighty-ninth. In accordance with and pursuant to the provisions of Article IV of the Code, the United States was separated into certain districts, identified as market areas. For each such district there was established, from statistics obtained through sworn statements furnished pursuant to provisions of the Code by dealers operating within that district, fair used car allowances or appraisal values, such [fol. 46] values being established and made public in accordance with Article IV and Article VII of the Code.

Disputed FOUND

Ninetieth. The complainant has not sought through the agencies provided by the National Recovery Administration for the Motor Vehicle Retailing Trade, either a modifi-

cation, stay or an exemption of any of the provisions contained in the aforesaid Code, including Article IV, Subdivision A of the aforesaid Code.

Disputed. FOUND

Ninety-first. Pursuant to the provisions of Article IV of the Code of Fair Competition, the National Automobile Dealers Association a trade association incorporated under the laws of the State of Illinois, with its principal office in St. Louis, Missouri, compiled an official guide known as the Association Official Guide Book, which said Official Guide Book creates and establishes average prices for used motor vehicles, which said average prices represent the maximum allowance permitted to be paid to prospective purchasers on their used motor vehicles on a trade-in.

Agreed.

Ninety-second. That complainant, in the establishment and conduct of its business, has invested and expended in both physical assets and in the establishment and retention of intangible good will, vast and considerable sums of money which has resulted in the development of a patronage of great monetary value.

Agreed.

Ninety-third. The State of New York, prior to the adoption of Chapter 781 of the Laws of 1933, at no time passed any legislation nor any other regulation regulating the Motor Vehicle Retailing Trade and prohibiting any of the practices which are now prohibited by Article IV of the Code of Fair Competition for the Motor Vehicle Retailing Trade.

Ninety-fourth. That the complainant has no adequate remedy at law and can only have relief in a Court of Equity.

[fol. 47] Pursuant to the foregoing Findings of Fact the Court makes the following:

Conclusions of Law

First. On the 16th day of June, 1933, there was duly enacted by the Congress and the President of the United States a law entitled The National Industrial Recovery Act.

Second. The National Industrial Recovery Act was properly enacted by the Congress within the powers granted to it by the Constitution of the United States.

Third. The National Industrial Recovery Act does not violate the Fifth Amendment of the Constitution of the United States.

Fourth. The National Industrial Recovery Act does not violate the Fourteenth Amendment of the Constitution of the United States.

Fifth. In the National Industrial Recovery Act, the Congress has set up a standard for the President's action and it has not abdicated or transferred it- essential legislative functions.

[fol. 48] Sixth. The grant to the President of the United States of the power to approve and enact Codes of Fair Competition for industry is not an unconstitutional delegation of legislative authority.

Seventh. The National Industrial Recovery Act contains a sufficient declaration of the existence of an emergency.

Eighth. The purpose of both the National Industrial Recovery Act and Chapter 781 of the Laws of 1933 of the State of New York was to lessen destructive competition and to curb competitive business practices that were destroying the industrial life of this nation.

Ninth. In the National Industrial Recovery Act Congress legislated on the subject as far as was reasonably practicable. From the necessities of the case Congress was compelled to leave to executive officials the duty of bringing about the results pointed out by the Statute.

Tenth. The National Industrial Recovery Act does not provide for excessive punishment in violation of the Constitution of the United States.

Eleventh. On the 26th day of August, 1933, there was duly enacted by the State of New York a law entitled Laws of 1933 Chapter 781.

Twelfth. Chapter 781 of the Laws of 1933 of the State of New York does not violate either the Constitution of the State of New York, or the Constitution of the United States, or any of the provisions thereof.

[fol. 49] Thirteenth. Chapter 781 of the Laws of 1933 of the State of New York was properly enacted by the State Legislature within the powers granted it by the Constitution of the State of New York.

Fourteenth. The Legislature of the State of New York has power to regulate existing economic evils by proper and appropriate regulations of business.

Fifteenth. Chapter 781 of the Laws of 1933 of the State of New York does not make the National Industrial Recovery Act part of its provisions.

Sixteenth. Chapter 781 of the Laws of 1933 of the State of New York does not violate the Fifth Amendment of the Constitution of the United States.

Seventeenth. Chapter 781 of the Laws of 1933 of the State of New York does not violate the Fourteenth Amendment of the Constitution of the United States.

Eighteenth. Chapter 781 of the Laws of 1933 of the State of New York does not constitute a surrender of State power.

Nineteenth. Chapter 781 of the Laws of 1933 of the State of New York does not violate Article III Section 17 of the Constitution of the State of New York.

Twentieth. Chapter 781 of the Laws of 1933 of the State of New York does not constitute an improper delegation of legislative power.

[fol. 50] Twenty-first. The enforcement of Chapter 781 of the Laws of 1933 of the State of New York does not deny to the complainant due process.

Twenty-second. Chapter 781 of the Laws of 1933 of the State of New York does not provide for excessive punishment.

Twenty-third. Chapter 781 of the Laws of 1933 of the State of New York contains a sufficient declaration of the existence of an emergency.

Twenty-fourth. Through Chapter 781 of the Laws of 1933 of the State of New York the State Legislature legislated on the subject as far as was reasonably practicable.

Twenty-fifth. There is no closed class or category of business that is affected with a public interest.

Twenty-sixth. The retail automobile industry has been adversely affected by economic conditions sufficiently to create an emergency.

Twenty-seventh: The Code of Fair Competition for the Motor Vehicle Retailing Trade was duly approved on the 3rd day of October, 1933, by the President.

Twenty-eighth. That in the adoption of the Code of Fair Competition for the Motor Vehicle Retailing Trade all the conditions provided both in the National Industrial Recovery Act and by the executive orders issued by the President, were duly complied with.

[fol. 51] Twenty-ninth. On the 5th day of December, 1933, pursuant to the Provisions of Chapter 781 of the Laws of 1933 of the State of New York a certified copy of the Code of Fair Competition for the Motor Vehicle Retailing Trade was duly filed in the office of the Secretary of State of the State of New York in the office of the Department of State thereof, and duly became the standard of fair competition for the Motor Vehicle Retailing Trade within the State of New York.

Thirtieth. The Code of Fair Competition for the Motor Vehicle Retailing Trade is an administrative product of the executive's application of the National Industrial Recovery Act.

Thirty-first. The means selected by the Motor Vehicle Retailing Industry through the provisions of its Code of Fair Competition have a real and substantial relation to the object sought to be attained.

Thirty-second. The Code of Fair Competition for the Motor Vehicle Retailing Trade and Article IV thereof does not constitute a denial of the rights guaranteed by the Fifth or Fourteenth Amendment of the Constitution of the United States.

Thirty-third. The New York State Legislature may adopt the provisions of the National Code for the Motor Vehicle Retailing Trade without further investigation as to details of standards such as those provided in the Code, in its effort to enforce the policy of Congress within the State in intrastate affairs.

[fol. 52] Thirty-fourth. The Code of Fair Competition for the Motor Vehicle Retailing Trade accords all members of the trade equal protection.

Thirty-fifth. Article IV of the Code of Fair Competition for the Motor Vehicle Retailing Trade is not in violation of or repugnant to the Fifth or the Fourteenth Amendments of the Constitution of the United States.

Thirty-sixth. Price regulation, as provided for in the Code of Fair Competition for the Motor Vehicle Retailing Trade, filed pursuant to Chapter 781 of the Laws of 1933 of the State of New York, does not violate the Constitution of the State of New York.

Thirty-seventh. The price regulation provided by Article IV of the Code of Fair Competition for the Motor Vehicle Retailing Trade is properly within the scope of the National Industrial Recovery Act and Chapter 781 of the Laws of 1933 of the State of New York.

Thirty-eighth. Article IV of the Code of Fair Competition for the Motor Vehicle Retailing Trade is a trade practice regulation and comes within the category of approved trade practice regulations that were adopted prior to the enactment of the National Industrial Recovery Act.

Thirty-ninth. Article IV of the Code of Fair Competition for the Motor Vehicle Retailing Trade is a valid exercise of the power granted by Congress to prescribe such rules and [fol. 53] regulations as may be necessary to effectuate the purpose of the National Industrial Recovery Act.

Fortieth. The used car allowance based on an average of business or of trades in the past is harmonious and founded in fairness.

Forty-first. The method provided in the Code of Fair Competition for the Motor Vehicle Retailing Trade of ascertaining the maximum used car allowance is reasonable.

Forty-second. The method of fixing the trade-in allowances provided for in the Code of Fair Competition for the Motor Vehicle Retailing Trade is not arbitrary or discriminatory, leading by caprice or otherwise to unreasonable discrepancies.

Forty-third. The Code of Fair Competition for the Motor Vehicle Retailing Trade does not place the plaintiff at a disadvantage or effect it adversely.

Forty-fourth. The plaintiff has failed to prove that there are any facts to support its claim that there is an unfair difference between the maximum used car allowance permitted by the Code of Fair Competition for the Motor Vehicle Retailing Trade and the reasonable value of the cars offered for trade-in purposes.

Forty-fifth. None of the provisions of the Motor Vehicle Retailing Trade Code contravene the prohibition against [fol. 54] monopoly or monopolistic practices contained in the National Industrial Recovery Act.

Forty-sixth. The Code of Fair Competition for the Motor Vehicle Retailing Trade and Article IV thereof does not encourage monopolicies or monopolistic practices.

Forty-seventh. The price regulation provided for in the Code of Fair Competition for the Motor Vehicle Retailing Trade does not constitute a monopoly.

Ordered, that judgment be entered accordingly.

Martin T. Manton, Circuit Judge. Robert P. Patterson, District Judge. Murray Hulbert, District Judge.

[File endorsement omitted.]

[fol. 55] In United States District Court, Southern District of New York

[Title omitted]

Supplemental Assignment of Errors—Filed Feb. 19, 1935

Now comes the appellant in the above entitled cause, pursuant to stipulation of the respective parties and the order of this Court dated the 1st day of February, 1935, and files the following supplemental Assignment of Errors, nunc pro tunc, as provided by said order on which it will rely, in addition to the Assignment of Errors heretofore filed, upon the prosecution of the appeal in the above entitled cause,

from the judgment of this Court entered herein on the 18th day of October, 1934:

1. The Court erred in holding and finding that on the 16th day of June, 1933, there was duly enacted by the Congress and the President of the United States a law entitled The National Industrial Recovery Act.

2. The Court erred in holding and finding that The National Industrial Recovery Act was properly enacted by the Congress within the powers granted to it by the Constitution of the United States.

[fol. 56] 3. The Court erred in holding and finding that The National Industrial Recovery Act does not violate the Fifth Amendment of the Constitution of the United States.

4. The Court erred in holding and finding that the National Industrial Recovery Act does not violate the Fourteenth Amendment of the Constitution of the United States.

5. The Court erred in holding and finding that in the National Industrial Recovery Act, the Congress has set up a standard for the President's action and it has not abdicated or transferred it- essential legislative functions.

6. The Court erred in holding and finding that the grant to the President of the United States of the power to approve and enact Codes of Fair Competition for industry, is not an unconstitutional delegation of legislative authority.

7. The Court erred in holding and finding that the National Industrial Recovery Act contains a sufficient declaration of the existence of an emergency.

8. The Court erred in holding and finding that the purpose of both the National Industrial Recovery Act and Chapter 781 of the Laws of 1933 of the State of New York was to lessen destructive competition and to curb competitive business practices that were destorying the industrial life of this nation.

9. The Court erred in holding and finding that in the National Industrial Recovery Act Congress legislated on the subject as far as was reasonably practicable. From the necessities of the case Congress was compelled to leave to executive officials the duty of bringing about the *the* [fol. 57] results pointed out by the Statute.

10. The Court erred in holding and finding that the National Industrial Recovery Act does not provide for excessive punishment in violation of the Constitution of the United States.

11. The Court erred in holding and finding that on the 26th day of August, 1933, there was duly enacted by the State of New York a law entitled Laws of 1933 Chapter 781.

12. The Court erred in holding and finding that Chapter 781 of the Laws of 1933 of the State of New York does not violate either the Constitution of the State of New York, or the Constitution of the United States, or any of the provisions thereof.

13. The Court erred in holding and finding that Chapter 781 of the Laws of 1933 of the State of New York was properly enacted by the State Legislature within the powers granted it by the Constitution of the State of New York.

14. The Court erred in holding and finding that the Legislature of the State of New York has power to regulate existing economic evils by proper and appropriate regulations of business.

15. The Court erred in holding and finding that Chapter 781 of the Laws of 1933 of the State of New York does not make the National Industrial Recovery Act part of its provisions.

[fol. 58] 16. The Court erred in holding and finding that Chapter 781 of the Laws of 1933 of the State of New York does not violate the Fifth Amendment of the Constitution of the United States.

17. The Court erred in holding and finding that Chapter 781 of the Laws of 1933 of the State of New York does not violate the Fourteenth Amendment of the Constitution of the United States.

18. The Court erred in holding and finding that Chapter 781 of the Laws of 1933 of the State of New York does not constitute a surrender of State power.

19. The Court erred in holding and finding that Chapter 781 of the Laws of 1933 of the State of New York does not violate Article III Section 17 of the Constitution of the State of New York.

20. The Court erred in holding and finding that Chapter 781 of the Laws of 1933 of the State of New York does not constitute an improper delegation of legislative power.

21. The Court erred in holding and finding that the enforcement of Chapter 781 of the Laws of 1933 of the State of New York does not deny to the complainant due process.

22. The Court erred in holding and finding that Chapter 781 of the Laws of 1933 of the State of New York does not provide for excessive punishment.

[fol. 59] 23. The Court erred in holding and finding that Chapter 781 of the Laws of 1933 of the State of New York contains a sufficient declaration of the existence of an emergency.

24. The Court erred in holding and finding that through Chapter 781 of the Laws of 1933 of the State of New York the State Legislature legislated on the subject as far as was reasonably practicable.

25. The Court erred in holding and finding that there is no closed class or category of business that is affected with a public interest.

26. The Court erred in holding and finding that the retail automobile industry has been adversely affected by economic conditions sufficiently to create an emergency.

27. The Court erred in holding and finding that the Code of Fair Competition for the Motor Vehicle Retailing Trade was duly approved on the 3rd day of October, 1933, by the President.

28. The Court erred in holding and finding that in the adoption of the Code of Fair Competition for the Motor Vehicle Retailing Trade all the conditions provided both in the National Industrial Recovery Act and by the executive orders issued by the President, were duly complied with.

29. The Court erred in holding and finding that on the 5th day of December, 1933, pursuant to the provisions of Chapter 781 of the Laws of 1933 of the State of New York a certified copy of the Code of Fair Competition for the Motor [fol. 60] Vehicle Retailing Trade was duly filed in the office of the Secretary of State of the State of New York in the

office of the Department of State thereof, and duly became the standard of fair competition for the Motor Vehicle Retailing Trade within the State of New York.

30. The Court erred in holding and finding that the Code of Fair Competition for the Motor Vehicle Retailing Trade is an administrative product of the executive's application of the National Industrial Recovery Act.

31. The Court erred in holding and finding that the means selected by the Motor Vehicle Retailing Industry through the provisions of Its Code of Fair Competition have a real and substantial relation to the object sought to be attained.

32. The Court erred in holding and finding that the Code of Fair Competition for the Motor Vehicle Retailing Trade and Article IV thereof does not constitute a denial of the rights guaranteed by the Fifth or Fourteenth Amendment of the Constitution of the United States.

33. The Court erred in holding and finding that the New York State Legislature may adopt the provisions of the National Code for the Motor Vehicle Retailing Trade without further investigation as to details of standards such as those provided in the Code, in its effort to enforce the policy of Congress within the State in intrastate affairs.

34. The Court erred in holding and finding that the Code of Fair Competition for the Motor Vehicle Retailing Trade accords all members of the trade equal protection.

[fol. 61] 35. The Court erred in holding and finding that Article IV of the Code of Fair Competition for the Motor Vehicle Retailing Trade is not in violation of or repugnant to the Fifth or the Fourteenth Amendments of the Constitution of the United States.

36. The Court erred in holding and finding that price regulation as provided for in the Code of Fair Competition for the Motor Vehicle Retailing Trade, filed pursuant to Chapter 781 of the laws of 1933 of the State of New York, does not violate the Constitution of the State of New York.

37. The Court erred in holding and finding that the price regulation provided by Article IV of the Code of Fair Competition for the Motor Vehicle Retailing Trade is properly within the scope of the National Industrial Recovery Act

and Chapter 781 of the Laws of 1933 of the State of New York.

38. The Court erred in holding and finding that Article IV of the Code of Fair Competition for the Motor Vehicle Retailing Trade is a trade practice regulation and comes within the category of approved trade practice regulations that were adopted prior to the enactment of the National Industrial Recovery Act.

39. The Court erred in holding and finding that Article IV of the Code of Fair Competition for the Motor Vehicle Retailing Trade is a valid exercise of the power granted by Congress to prescribe such rules and regulations as may be necessary to effectuate the purpose of the National Industrial Recovery Act.

[fol. 62] 40. The Court erred in holding and finding that the used car allowance based on an average of business or of trades in the past is harmonious and founded in fairness.

41. The Court erred in holding and finding that the method provided in the Code of Fair Competition for the Motor Vehicle Retailing Trade of ascertaining the maximum used car allowance is reasonable.

42. The Court erred in holding and finding that the method of fixing the trade-in allowances provided for in the Code of Fair Competition for the Motor Vehicle Retailing Trade is not arbitrary or discriminatory, leading by caprice or otherwise to unreasonable discrepancies.

43. The Court erred in holding and finding that the Code of Fair Competition for the Motor Vehicle Retailing Trade does not place the plaintiff at a disadvantage or affect it adversely.

44. The Court erred in holding and finding that the plaintiff has failed to provide that there are any facts to support its claim that there is an unfair difference between the maximum used car allowance permitted by the Code of Fair Competition for the Motor Vehicle Retailing Trade and the reasonable value of the cars offered for trade-in purposes.

45. The Court erred in holding and finding that none of

the provisions of the Motor Vehicle Retailing Trade Code contravene the prohibition against monopoly or monopolistic practices contained in the National Industrial Recovery Act.

[fol. 63] 46. The Court erred in holding and finding that the Code of Fair Competition for the Motor Vehicle Retailing Trade and Article IV thereof does not encourage monopolies or monopolistic practices.

47. The Court erred in holding and finding that the price regulation provided for in the Code of Fair Competition for the Motor Vehicle Retailing Trade does not constitute a monopoly.

48. The Court erred in refusing to hold and find that the Code of Fair Competition for the Motor Vehicle Retailing Trade, is null, void and invalid, having been adopted and approved by the President of the United States in violation of the National Industtrial Recovery Act, more particularly Chapter 1 and Chapter 3a thereof.

49. The Court erred in refusing to hold and find that more particularly Article IV and said Official Guide Book as provided in said Article IV, is invalid, null, void and unconstitutional, being repugnant to the Fourteenth Amendment of the Constitution of the United States, and that the same deprives complainant of its rights, liberty and property without due process of law.

50. The Court erred in refusing to hold and find that Chapter 781 of the Laws of 1933 of the State of New York, is invalid, null, void and unconstitutional, by reason of the illegal manner of enactment, as providing for excessive punishment, as an improper delegation of legislative function in violation of the Constitution of the State of New York, and repugnant to the Fourteenth Amendment of the Constitution of the United States in that it deprives the [fol. 64] complainant of its rights and property without due process of law.

51. The Court erred in refusing to hold and find that Chapter 781 of the Laws of 1933 of the State of New York, the Code of Fair Competition for the Motor Vehicle Retailing Trade, and the Official Guide Book issued pursuant

thereto, are invalid, null, void and unconstitutional in that they deprive the complainant of its rights, liberty and property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

52. The Court erred in refusing to hold and find that the National Industrial Recovery Act, the Code of Fair Competition for the Motor Vehicle Retailing Trade and the Official Guide Book are invalid, null, void and unconstitutional in that the National Industrial Recovery Act was enacted by Congress in excess of the power granted to it by the Constitution of the United States, as providing for excessive punishment, as an improper delegation of legislative power by the Congress to the President, and as depriving the complainant of its rights, liberty and property, in derogation and violation of the Fifth Amendment to the Constitution of the United States.

53. The Court erred in refusing to hold and find that the defendant, William C. Dodge, as District Attorney for the County of New York, State of New York, his successors, assistants, deputies, agents and employees be temporarily and permanently enjoined from in any way or manner enforcing against the complainant any of the provisions of [fol. 65] the Code of Fair Competition for the Motor Vehicle Retailing Trade, more particularly the provisions of Article IV thereof, and any order, rule or regulation that may be issued thereunder or that has been issued thereunder or any of the price regulations fixed and promulgated in the Official Guide Book as provided by Article IV of the Code of Fair Competition for the Motor Vehicle Retailing Trade or any part or parts thereof, and from instituting or causing to be instituted any suit at law or in equity, prosecution or proceeding or otherwise as the case may be, against the complainant herein for any alleged violation of any of the provisions of the said Code of Fair Competition for the Motor Vehicle Retailing Trade under Chapter 781 of the Laws of 1933 of the State of New York.

54. The Court erred in finding defendant-appellee's Findings of Fact numbered and designated "Twenty-Fifth", "Twenty-Sixth", "Twenty-Seventh", "Twenty-Eighth", "Thirty-Fifth", "Thirty-Sixth", "Thirty-Seventh",

"Thirty-Eighth", "Thirty-Ninth", "Fortieth", "Forty-First", "Forty-Second", "Forty-Third", "Forty-Fourth", "Forty-Sixth", "Fifty-Sixth", "Fifty-Ninth", "Sixty-First", "Sixty-Second", "Sixty-Third", "Sixty-Fourth", "Sixty-Fifth", "Sixty-Sixth", "Sixty-Seventh", "Seventy-Fifth", "Seventy-Sixth", "Eighty-Fourth", "Eighty-Fifth", "Eighty-Ninth", "Ninetieth".

55. The Court erred in failing to find complainant-appellant's proposed Findings of Fact contained in paragraphs numbered and designated "Third", "Fourth", "Sixth", "Eighth", "Ninth", "Eleventh", "Twelfth", "Thirteenth", "Fourteenth", "Fifteenth", "Sixteenth", "Eighteenth", "Nineteenth", "Twentieth", "Twenty-First", "Twenty-Third", "Twenty-Fourth", "Twenty-Fifth", "Twenty-Sixth", "Twenty-Seventh", "Twenty-Eighth", "Twenty-Ninth", "Thirty-First", "Thirty-Second", "Thirty-Third", "Thirty-Fourth".

[fol. 66]

Wherefore, complainant-appellant prays that the judgment of this Court dated the 18th day of October, 1934, which dismissed the Complaint of the complainant-appellant and granted judgment unto the defendant-appellee, be reversed, and that said District Court be directed to enter judgment herein against the defendant-appellee for the relief demanded in the Bill of Complaint herein.

Dated, February 18th, 1935.

Miller, Paul & Placer, Attorneys for Complainant-Appellant, Office & P. O. Address, 276 Fifth Avenue, Borough of Manhattan, City of New York.

[File endorsement omitted.]

[fol. 67] In United States District Court, Southern District of New York

[Title omitted]

Stipulation as to Transcript

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the an-

nexed papers are true copies of the originals on file in the above Court.

Dated, New York, February 19th, 1935.

Miller, Paul & Placer, Attorneys for Complainant-Appellant. David Blitzer, Harold H. Straus, Attorneys for Defendant-Appellee.

[fol. 68] Clerk's Certificate to foregoing transcript omitted in printing.